



## ORDINANCE REVIEW COMMITTEE

### Members

*Councilor John Thorpe, Chair*  
*Megan Paik, Citizen, Vice-Chair*  
*Councilor Marianne LaBarge*  
*Councilor Jim Nash*  
*Jeff Napolitano, Citizen*

### MEETING MINUTES

**Date: February 22, 2021, Time: 5:30 p.m.**

### **Virtual Meeting**

1. **MEETING CALLED TO ORDER/ROLL CALL:** At 5:31 p.m., Councilor Thorpe called the meeting to order. On a roll call, the following members were present: Councilor John Thorpe, Councilor James Nash, Councilor Marianne LaBarge, Member Jeff Napolitano and Member Megan Paik. Also present were City Solicitor Alan Seewald, Office of Planning and Sustainability Director Wayne Feiden and Administrative Assistant Laura Krutzler.
2. **ANNOUNCEMENT OF AUDIO/VIDEO RECORDING**  
Councilor Thorpe announced that the meeting was being audio/video recorded.
3. **PUBLIC COMMENT**  
Councilor Thorpe opened the floor to public comment.

**Jackie Ballance** of Northampton informed members that there was a development in her own neighborhood last November that brought to her attention the intersection of sustainable, affordable and equitable housing with city regulations. As a result, she has been learning about building codes, zoning codes and how city government works. At their last meeting, she was very moved by Member Paik's comment about racial discrimination in housing and how housing policy affects disparity in housing accessibility for marginalized communities. Since then, she has been brainstorming with friends and neighbors about possible paths to more equity and affordability in new home construction. She shared a couple of those ideas with them by email. (Ms. Balance referred to a series of emails to the Ordinance Review Committee: email dated February 7, 2021 with attachment "How Can the Existing "Fit" Ordinance Help to Address New Housing Justice Issues?"; email dated February 18, 2021 recommending Alan Verson's suggestion to cap the size of new single-family homes built through the two-family by right zoning amendment, email dated February 22, 2021 re: Cap idea is just to trigger site plan review, not to deny larger houses and email re: Tiny house development coming to n'ton dated February 19, 2021. See attachments to master version of minutes.)

Applying the 'fit' concept is actually in alignment with the Climate Resiliency and Regeneration Plan's proposed point system for site plan review proposed by their esteemed guest Wayne Feiden. She knows they cannot limit the size of new homes by right but they do have the ability to set a lower size to trigger site plan review, especially if there is a resilience and regeneration point system in place. She is just here to listen and see what she can learn. She hopes the city solicitor can help them find a path that will work to increase affordability, equity and resilience in housing. She is looking forward to the conversation.

There being no further comments, Councilor Thorpe moved to the next item on the agenda.

#### **4. APPROVAL OF MINUTES OF JANUARY 11, 2021**

Councilor LaBarge moved to approve the minutes. Member Paik seconded.

Member Paik reviewed some changes to the February 1, 2021 minutes which she said she would forward to Mrs. Krutzler. Those minutes are not on the agenda for acceptance, Ms. Krutzler clarified.

For the January 11, 2021 minutes, Member Paik said she gave an impassioned speech which she would summarize since it was not included because she lost her audio while speaking. She reviewed additional changes as follows:

Attorney Seewald questioned how systemic racism directly related to their review of ordinances. She pointed out that the 2020 ordinance review committee was formed in response to an amendment to a council resolution with systemic racism in its title. Because of that, she references this in a paragraph in the executive summary which states, "Although laws are written to be impartial, they may have disparate impacts on marginalized populations. Structural causes of systemic racism may include but are not limited to residential segregation, intergenerational wealth inequity, unequal educational opportunities, barriers to civic participation, implicit bias and discrimination."

This is the reason intergenerational wealth inequality came up so much in their discussion January 11<sup>th</sup>. She agreed that community education is not their direct objective but said she thinks it is an important indirect objective since everything they do is for public consumption, including their report.

One sentence was dropped. After, "Member Paik wondered if the committee was interested in talking about barriers to civic participation, another structural cause of system racism," she proposed insertion of the sentence, "This was also in the Charter Review Committee's report as a 'Topic for Further Study.'"

Councilor Thorpe suggested Member Paik send the changes to Ms. Krutzler so she could insert them in the minutes in red-faced bold for presentation at the next meeting. Members agreed.

Councilor LaBarge withdrew her motion to approve. Member Paik seconded.

Councilor Nash moved to table action on the minutes until the next meeting after the changes have been made. Councilor Thorpe seconded. The motion passed unanimously 5:0 by roll call vote.

#### **5. CENSUS DATA ON DISPROPORTIONATELY IMPACTED COMMUNITIES IN NORTHAMPTON**

Discussion with Office of Planning and Sustainability (OPS) Director Wayne Feiden

Director Feiden said he wasn't exactly sure what they wanted so he was going to present a teaser of data. He proceeded to screen-share a Powerpoint presentation. (See attachment to master version of minutes.)

It's really easy to do a simple analysis of straight demographics. Northampton has an older population than the nation as a whole and a more female population even when the population of Smith College is backed out, partly because it is an older population, Director Feiden presented. An older population almost by definition is a more female population but Northampton is still more female even backing out those over 65.

Northampton's population is generally much whiter and much less diverse than other parts of the country. Massachusetts is the whitest section of the country. People in his age group are particularly white while people under 18 are a much more diverse population.

Northampton has a lower homeownership rate than the country as a whole, he continued. That's either a good thing or a bad thing depending on your perspective. In the United States, the most heavily-subsidized program in the country is homeownership because the Internal Revenue Service (IRS) allows people to deduct both mortgage interest and property taxes. There is huge interest in creating home ownership, but home ownership leaves out a lot of the population.

The risk is less the raw number and more the change (the delta). When he first got to Northampton, the city was 51% home owners; the percentage is dropping slowly but it is dropping. They are losing people. They are heavily a city of single-family homes with some condominiumization of rental properties.

Councilor Nash expressed his understanding that, compared to the national average, Northampton is below everybody else in terms of home ownership.

Director Feiden said that is correct because they have more rentals. "We're a college community in part," he confirmed. "The more urban you are, the more rental you are." The rate of home ownership in New York City and Boston is lower, he pointed out. Even though they are a tiny community, they are a city.

Councilor Nash said he hears from people how difficult it is to get an apartment and yet 45% of their housing is rental.

12.5% of units are affordable per the state definition of subsidized affordable units, Director Feiden advised.

Northampton has higher retail sales per capita than average around the country. "We're a county seat, so people to the north and west of us in particular come to Northampton and spend their retail dollars," he explained. This is a good part of the economy but also highlights its vulnerability. Whether it's the long-term trend toward Amazon or the short-term COVID trend, this is why Northampton is harder hit than many communities by COVID between college not being in session and its reliance on retail sales. The good news is that people are spending money here but the bad news is it makes [recession] more of a threat.

Also, as far as social equity, retail/service jobs tend to be lower-paying jobs. Northampton has a greater percentage of its work-force in lower-income jobs. They have a lot of people in service sectors.

The \$64,974 median household income for Northampton is higher than the nation as a whole but lower than the rest of Massachusetts, Director Feiden reported. Pre-COVID, pretty consistently median income was on the low end but the unemployment rate was also on the low end. They had a lot of relatively stable

employment so they were less cyclical in good economic times. In bad economic times they were underpaid but had fewer people unemployed. COVID hit them uniquely worse.

The poverty rate in Northampton is lower than most Massachusetts cities and higher than almost every Massachusetts town. With regard to the percentage of cost-burdened renters, half their population - 49.8% of renters - pay more than 30% of income as rent.

22.8% of renters are severely cost-burdened, defined as spending over 50% of income on rent.

People in his world have always talked about 30% of income being cost-burdened and 50% severely cost-burdened. They are seeing more and more focus on income plus transportation costs as opposed to just housing costs because in Boston rent is higher but a person is more likely to take the metro or MBTA. Out here, residents are more likely to have a car, so that may be a more honest evaluation of poverty.

Director Feiden presented statistics for houseless individuals. Relatively recent data collected by Community Action Pioneer Valley (CAPV) indicates that, as of January 2020 (pre-COVID), a total of 136 individuals in Northampton were experiencing homelessness: 102 sheltered (includes 22 children, 6 youth) and 34 unsheltered (includes 2 youth). So, relatively few unsheltered although still a significant number.

Massachusetts is one of the few states in the country where children have a right to housing, so they will have fewer unsheltered children in Massachusetts than in many other states.

Not surprisingly, there is a discrepancy in who is homeless, he confirmed. Whites are only 58% of the homeless population but 88% of the population as a whole. Blacks are 18% of homeless but only 2.3% of total population while Hispanics are 22% of homeless but only 4.5% of total population.

Councilor LaBarge asked the poverty rate in Northampton.

"We're about 15%," Director Feiden reported. There's always a lag in the data. Data comes from the American Community Survey (ACS).

## **6. EQUITY CONSIDERATIONS ALREADY EMBEDDED IN OPS PLANNING AND COMMUNITY DEVELOPMENT ACTIVITIES**

Director Feiden showed a map of impervious area. One of the hot issues these days is where the city discourages and encourages development, he shared. If city officials discourage development in urban areas, it goes out to suburban areas. Not surprisingly, the more rural the area of Northampton, the more paved surface per person. Rural areas are greener with more trees, but people there have bigger drive-ways, bigger houses and are more likely to have pools, he reported.

Northampton has some data from the city census and other sources that can be broken down into smaller areas. Most data from ACS is city-wide but some data is available in smaller geographies. Some data is confidential. For example, they know where everybody in the city lives, including people under 17. They can publicly map where everyone over the age of 17 lives but can only show those under 17 by precinct, by ward or by census tract.

The city census does not include homeless, Director Feiden said. A point in time survey is done. On a cold day when they can expect as many people to be housed as possible they go out to known homeless

encampments. Actual censuses (2020 U.S. Census, city census and point in time survey) by definition undercount because they don't do any projections for missing people. The American Community Survey is more accurate. A census will absolutely undercount any person that stays far away from social workers.

There is an unbelievable amount of demographic information, but cross tabulations are more difficult, Director Feiden noted. Finding the number of Latinos is easy but finding the number of Latino's that are housing-burdened and restaurant workers is harder. They only get the cross-tabulations that the census department does for them.

The ACS is the best source of cross tabulations out there, he confirmed.

Members asked questions and offered comments.

Councilor LaBarge asked what is meant by two or more races.

Director Feiden explained that the U.S. census used to require people to choose one category. They decided it doesn't reflect what America is, so they started allowing people to choose more categories, such as Black Pacific Islander, etc. 4.2% of the population is saying, 'I am some combination.'

Obviously, race is an artificial construct, he observed. Hispanic and Latino are not consider races. White alone is the dominant population.

The ACS is pretty easy to use to extract information from.

He showed a slide entitled, "The Great Gatsby Curve." They often think about wealth creation; i.e. – the amount of median income - and focus on inequities. Other countries that are richer or poorer have more of a difference between the richest and the poorest. Northampton is actually not that bad; it has less inequity than the United States as a whole. It doesn't have a huge underclass (15% of the population is below the poverty line) or a huge class of people earning more than a million dollars, so there is less inequity.

The next slide featured significant acts or actions in the history of structural racism, such as the Naturalization Act of 1790, which limited citizenship for new residents to whites. When they refer to structural racism, they are talking about policies in place for many years which treat different groups differently. As an example, he highlighted the first zoning case to go to the Supreme Court, the Village of Euclid vs. Ambler Realty. In that case, zoning was upheld because Supreme Court Justice Sutherland opined that "often [an] apartment house is a mere parasite...to take advantage of open space and attractive surroundings created by the residential character." He thought of apartment homes and renters as 'parasites.'

Director Feiden presented the five aspects of equity the planning department tries to pay attention to: distributional equity, structural equity, procedural equity, intergenerational equity and cultural equity. It shows up in odd ways. Northampton is negotiating with Amherst and Pelham for community choice aggregation, a system where communities purchase electricity jointly. Members were debating voting rules, and Pelham proposed 'one town, one vote.' Northampton representatives pointed out that this would not necessarily represent Northampton. Pelham responded that the core principle is equity, so its okay because they were going to represent equitable interest. But in looking at the list, it is clear it doesn't really represent procedural equity, since white middle-class people shouldn't really be representing the positions of everybody else in the community. This becomes the test they put policies to.

The last slide presented zoning proposals presently in the pipeline, such as two-families by right in all residential districts. This is what equity means in the trenches, he suggested. They know that renters are underrepresented, so they balance that by providing two-family homes to give renters opportunities. They know there is not enough affordable housing, so one of the other packages is granting density bonuses for affordable housing.

He wanted to show that planning activities/proposals are flowing from principles of equity, he indicated.

Members discussed at some length. Director Feiden explained zoning changes in more granular detail. For example, underlying the two-family home proposal is the data point that the median cost of a duplex unit is \$114,000, while the median cost of a single-family home \$334,000, so, on average, two-families are less expensive.

Also, there is a shortage of rentals at every level of the market, Feiden noted. When Old School Commons went on the market (it used to be rentals and was converted to condominiums), Northampton lost a lot of really high-end rentals. They have a shortage of rentals at every level, whether it is for doctors doing their residency at Baystate or service workers, and they need all of them. A lot of people want to rent and they want to serve all parts of the market. On the average, two-family homes are substantially less expensive and their rent is less expensive.

In terms of home ownership, home ownership is at 54%, so roughly 45% of housing is rental, Councilor Nash observed. He expressed his understanding that they are talking about shifting that even further. What percentage are they shifting it towards? He asked. "What's the sweet spot?" he wondered.

From 1950 to 2000, Northampton's population didn't grow by a single person, and it has been in decline for 20 years. He would be happy if they stopped the decline, but they continue to lose units. Some units go condo, for example, Old School Commons went condo. Clarke School condominiums did not go condo and can't because they are getting historical tax credits but, if he had to predict, when those tax credits run out, they will go condo. They continue to have two-families that go single-family. He doesn't really have a target but he wants to stop the decline, he said.

In response to a question from Councilor LaBarge, Director Feiden said average family size at the end of WWII was almost five people and the average dwelling size was about 1,200 square feet. Since WWII, family size has been cut in half and dwelling size has doubled. People are buying larger houses because they can. In Councilor Thorpe's neighborhood, a lot of homes that were once two-families have been converted back to single-families.

The accessory dwelling unit (ADU) project has been fabulously successfully, he reported. It has been successful at creating lower-rent homes but a significant number of those are guest bedrooms which families reserve as living spaces for family members.

One of the biggest challenges of affordable housing generally is that a lot of the costs are in the bathroom and kitchen. He is a big advocate for small homes but the reality is one of the reasons they don't see more of them is they still need a kitchen and bathroom. The savings of going from an 1,800 square foot home to a 1,200 square foot home is not as great as one might think.

Councilor Nash asked what the missing piece is in the housing stock.

According to a housing needs assessment, three-bedroom houses were identified as one of the biggest gaps, Director Feiden said. The homes built by KB Properties between Florence Road and Ryan Road in the 1950's and '60's are 1,200- to 1,400-s.f. units and a lot of them are three bedrooms.

He referred to an opposite data point as a reason for strongly encouraging one bedrooms and efficiencies. They are all sympathetic to people who are homeless on the streets. Their partners have been successful in creating a lot of units for people who are homeless or at risk of homelessness. For all of the complaints about people who are homeless, complaints are almost zero for people who were homeless but are now living in units. It's more expensive to support people who are homeless than to support people in homes. One bedrooms and efficiencies are really important to him for breaking that cycle.

Councilor Nash pointed out that 8.6% of the population identifies as Hispanic or Latinx and this population is underserved, and Director Feiden confirmed this impression. The reality is populations that are more marginal are less likely to participate in city government and are less visible. Members lamented the loss of Casa Latina when it was taken over by CAPV.

**7. JACKIE BALLANCE PROPOSAL FOR APPLYING 'FIT' CRITERIA OF DESIGN STANDARDS FOR RESIDENTIAL DEVELOPMENTS – CH. 350 ZONING, ATTACHMENTS 6, 7 AND 8**

As acknowledged by Jackie Ballance, the city can't legally limit the size of a single-family home, Director Feiden stressed. They think they can incentivize it and so have proposed zoning for half-scale units that would give extra density points for small units. They can't limit size. They have always understood that they have to give people a path to absolute as of right development without site plan approval. Now, if builders are doing over 2,000 s.f. construction for other than a single-family home, they have to go to the Planning Board for site plan approval. They don't look at single-family homes. The same applies here. They don't get to apply site plan criteria to single-family homes unless they're giving 'extra stuff' such as density bonuses.

They continue to add design standards to site plan approval. When the council reduced the lot size in URA and URB, they added additional design standards for two-family homes. They do have some mechanism when there's consensus as a community. The trend in Northampton for 30 years has been to reduce the requirement for special permits, permits boards can say 'no' to. They added site plan approval 32 years ago and have been beefing it up. They are moving less and less toward saying 'no' to projects but instead giving developers conditions of approval.

Under state law, communities have to have at least one substantial use as of right in every zoning district, Attorney Seewald confirmed. They can't condition all uses on special permit. Historically, that use in residential districts is the single-family residence. As stated in his email, the indirect restriction on building size through traditional zoning mechanisms such as setbacks, floor area ratios and lot coverage limitations has the effect of reducing the size of a permissible house but has to be in relation to the size of a lot. He got the response from Jackie Ballance that this not a cap but a trigger for site plan approval. Site plan approval is a process that attaches to uses allowed by right. It is intended to give the board discretion to improve the project but not discretion to deny it. When Northampton moved to site plan approval, it was no longer a cap, it was just a trigger for review so it wouldn't allow the city to limit the size of houses or deny large houses.

As he understood Ms. Ballance's original 'fit' proposal, he had other concerns, for instance, looking at the history of a builder's previous buildings and determining how often they exceed what Zillow has as a value, Attorney Seewald continued. He cautioned that zoning is always about the land use, it's never about the land user. They can't treat builders differently. They never look at who the applicant is, they only look at the land use in the application. Of course, he also has a problem with the idea that Zillow would somehow be an authoritative measure of value.

Director Feiden and he did speak about this and while he has raised issues about it, it does raise some ideas. It's an innovative approach. If the worst that can happen is some judge tells them they can't do this, he's happy to be innovative and see what sticks. Unlike ADU's where the initial dwelling is unrestricted in size and planners are awarding bonus density for a second unit that is restricted in size, this is restricting both dwelling units and, in that sense, would be directly restricting the size of a single-family dwelling. The question of whether the extra unit is an offset that somehow assuages that impermissibility is yet to be determined. He applauds Ms. Ballance's approach and desire to bring down prices and encourage energy efficiency and sustainability but is not sure zoning is a way they are going to be able to do this, at least the way zoning is interpreted in their state right now.

Chilmark has a trigger for site plan approval above a certain threshold but he cautioned that the SJC has treated Martha's Vineyard differently. The SJC has indicated that because it is such a fragile environment and an island, they look at it a little differently. He is aware Chilmark has site plan approval for single-family houses over a certain threshold.

At 6:38 p.m., members noticed that Councilor Nash was no longer present. Ms. Krutzler said he had messaged her to say he had to leave for another meeting.

Councilor Thorpe thanked Director Feiden for joining them.

## **8. ORGANIZATION/DISPOSITION OF TOPICS ALREADY REVIEWED**

- ❖ **Bucket No. 1 – Housekeeping Changes**
- ❖ **Bucket No. 2 - Solicited and Unsolicited Recommendations for Ordinance Changes**
- ❖ **Bucket No. 3 - Ordinances Reviewed for Impact on Marginalized Communities**

Member Paik noted that the Fair Chance Ordinance was discussed on November 30<sup>th</sup> and she shared with members a toolkit for developing local ordinances but the committee's review/actions are not included on the spreadsheet for Bucket #3. To her recollection, it was referred back to the housing partnership for further study. The discussion was that it may not be appropriate for Northampton.

Councilor Thorpe shared his recollection that states that have implemented it are outside Massachusetts.

Attorney Seewald said he believed they were talking about prohibiting landlords from accessing criminal history. Massachusetts has a state Criminal Offender Record Information (CORI) law. He spent the day studying this very topic because the city has had some public record requests that implicate the CORI law. When first enacted, the only parties that had access to criminal record offender information were law enforcement agencies. It really was at the behest of landlords and employers that it became a tiered system of access. Since 2010, state law has been amended to specifically allow landlords and employers access. He is very concerned about the ability of the city to somehow change or render changes to this



statewide law. CORI laws are the essence of occupying the field. This is a state law that is the same in every city and town.

If the committee really wanted to recommend it to city council and the council wanted to proceed, he would have to consider whether it would engender liability on the part of the city. He would fully expect a landlord to challenge it. "I have grave concerns about its validity because the CORI law is a statewide law that applies equally and the same to every jurisdiction in the state." State legislature has specifically opened it up to landlords in the last decade.

Member Paik confirmed that the cities that have implemented it are definitely not in Massachusetts. Cities mentioned were Seattle, Washington, D.C. and New York City.

Member Napolitano had to leave the meeting.

Member Paik expressed her understanding that another remedy proposed - having a portable screening report - also wouldn't apply in Northampton because they can't really do much to regulate civil relationships. That has been discussed and she doesn't really see it as a recommendation going forward.

Attorney Seewald said he believes at the last meeting there was discussion of collapsing buckets 2 and 3. Members agreed this is a good idea.

He would also love to have people's thoughts on whether any subjects are missing. At one point, they talked about alarm fees, he noted. He wants to make sure none of the members have ordinance proposals that aren't reflected here because he would like to take a stab at a first draft of a final report for the next meeting.

Member Paik asked if they could continue the discussion. Attorney Seewald said yes. At the next meeting, he would like to have everyone agree that this is the universe of ordinances the committee has discussed.

Attorney Seewald said at least one thing was sent to the Planning Board and has not come back yet. Ms. Krutzler said this would be on the Planning Board's next meeting in March.

Ms. Krutzler agreed to send out a condensed list combining Buckets #2 and #3.

Member Paik said she would like to have a fuller discussion of the committee's position on the two-family by right ordinance but would like more members to be present. She asked to put it on the agenda for the next meeting.

## **9. ADJOURN**

Councilor LaBarge moved to adjourn. Member Paik seconded. The motion passed unanimously 3:0 by roll call vote with Councilor Nash and Member Napolitano absent. The meeting was adjourned at 7:01 p.m.